

Issue: Use Tax on Purchases, Fixed Assets, or Consumables

1. The Department's prima facie case, inclusive of all jurisdictional elements, was established by the admission into evidence of the Department's Notice of Determination (Dept. Exh. No. 3; and amended return Dept. Exh. No. 4)
2. The Taxpayer, an electric cooperative, filed a claim for credit for \$8,407.38 for Use Tax it paid on water heaters it gave away for free. Sales tax was paid on out-of-state vendor acquisitions, and self assessed Use Tax on heaters acquired in-state-but acquired with a resale exemption.

3. The Department auditor allowed part of the claim wherein transactions the Taxpayer self-assessed tax on personally which it had already paid tax on to out-of-state suppliers. (Tr. at p. 11). The claim was later offset when the auditor discovered water heaters acquired by the Taxpayer to be given away as gifts did not have tax paid on them to the vendors. (Tr. at p.12).

4. Taxpayer's counsel stipulated that the tax subsequently paid on the heaters was due to the State of Illinois and their claim should not prevail (Tr. at pp. 13 and 14).

CONCLUSIONS OF LAW: Administrative Regulation 150.305, promulgated under the Use Tax Act states in subsection c:

"Although the donee in a gift situation is not a taxable user, the donor who purchases the property and gives it away makes a taxable use of the property when making such gift" (86 Illinois Administrative code 150.305 (c)).

This tax law is dispositive of the matter in issue. The Taxpayer's counsel conceded that the Taxpayer was not in compliance with the law at the time the claim was filed, and prospectively, it would follow the technicality of the law. (Tr. at p. 14). Accordingly, there exists no controversy that the denial of the subject of claim was proper.

RECOMMENDATION: Pursuant to my findings of fact, Taxpayer stipulations, and conclusions of law, I recommend the subject denied claim be affirmed against the Taxpayer.

William J. Hogan
Administrative Law Judge